

NO. 21751/

UNITED STATES COURT  
OF APPEALS  
FOR THE NINTH CIRCUIT

---

PAUL MACARTHUR HUNTER,  
Appellant,

vs.

UNITED STATES OF AMERICA,  
Appellee.

---

BRIEF OF APPELLEE

---

APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
NORTHERN DIVISION

**FILED**

MAY 19 1967

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16 STATEMENT OF JURISDICTION

17  
18 Appellant was charged in the following one count  
19 Indictment with refusing to be inducted into the Armed Forces  
20 of the United States on or about January 11, 1966, (R1):

21 "The Grand Jury charges:

22 That on or about January 11, 1966, at Seattle,  
23 Washington, within the Northern Division of the  
24 Western District of Washington, PAUL MACARTHUR  
25 HUNTER did knowingly, wilfully and unlawfully  
fail, neglect, and refuse to perform a duty  
required of him by the Universal Military Training  
and Service Act, and the rules, regulations,  
and directions made pursuant thereto, in



1  
2 that, having been duly and regularly ordered by a  
3 local Selective Service Board to report and  
4 submit to induction into the Armed Forces of the  
United States of America, he failed, neglected  
and refused to be inducted.

5 All in violation of Title 50 U.S.C., App.,  
6 Section 462, and 32 C.F.R. 1632.14."

7 Appellant entered a plea of not guilty on September 2,  
8 1966, waived trial by jury (R3)<sup>1/</sup> and was tried by the Court  
9 on Decmeber 6, 1966. The Court took the case under advise-  
10 ment and announced a decision of guilty on December 16, 1966.  
11 Appellant was sentenced on February 3, 1967, to the custody  
12 of the Attorney General for a period of three years (R6). A  
13 timely notice of appeal was filed on February 3, 1967, also.  
14 (R8)

15 Jurisdiction of the District Court was based on Title 18,  
16 United States Code, Section 3231. This Court has jurisdiction  
17 of the appeal under Title 28 U.S.C., Section 1291 and 1294.

18 COUNTERSTATEMENT OF THE CASE

19 The evidence at trial established that the appellant  
20 was ordered by Local Board No. 14, Selective Service System,  
21 Yakima, Washington, on December 29, 1965, to report for

22 I/  
23 In this brief (R) will refer to the number of the  
24 records herein given by the Clerk of the Court for  
25 the Western District of Washington. (TR) will refer to  
the Court Reporter's Transcript of proceedings. (EX)  
will refer to exhibits.



1  
2 induction into the Armed Forces of the United States on  
3 January 10, 1966, at Seattle, Washington (EX 39). Appellant  
4 reported to the induction station in Seattle, but refused  
5 to be inducted into the Armed Forces of the United States.  
6 (EX 1-3) At that time he signed a witness statement as  
7 follows:

8 "I refuse to be inducted into the Armed Forces  
9 of the United States." /s/ Paul Macarthur Hunter."  
10 (EX 1-3)

11 The following summary of events leading up to  
12 appellant's refusal to be inducted is presented in  
13 chronological order for the court's convenience:

14 July 6, 1961: Registrant indicated to Local Board No.  
15 14, Yakima, Washington, on a classification questionnaire  
16 that he was conscientiously opposed to participation in  
17 war in any form. (EX 103 through 113)

18 July 17, 1961: Registrant submitted a completed  
19 conscientious objector form (SSS Form No. 150) to Local  
20 Board No. 14. (EX 92 through 102)

21 August 8, 1961: Registrant was classified in class  
22 I-A and notified of said classification on August 11, 1961.  
23 (Cover Sheet)

24 August 21, 1961: Registrant requested a personal  
25 appearance hearing with the Appeal Board. (EX 82)



1  
2 November 3, 1961: Registrant was given an appointment to  
3 appear before Local Board No. 14 on November 7, 1961. (EX 80)

4 November 7, 1961: Registrant failed to appear for  
5 personal appearance before Local Board as scheduled. (EX  
6 Cover Sheet and 78)

7 December 20, 1961: The Appeal Board reviewed regis-  
8 trant's file and tentatively determined that he should not be  
9 classified in Class I-0 or in a lower class. (Cover Sheet)

10 The Appeal Board on December 29, 1961 sent the regis-  
11 trant's file to the United States Attorney, Spokane,  
12 Washington, for an FBI background investigation and for trans-  
13 mission to a Department of Justice Hearing Officer. (EX 77)

14 May 11, 1962: Registrant appeared before a Department  
15 of Justice Hearing Officer at Spokane, Washington. (EX 71)

16 June 26, 1962: T. Oscar Smith, Chief, Conscientious  
17 Objector Section, Department of Justice, recommended to the  
18 Appeal Board that Hunter's conscientious objector claim be  
19 not sustained. (EX 70-72)

20 July 2, 1962: Registrant was furnished with a copy of  
21 the recommendation of the Department of Justice to the  
22 Appeal Board for the Eastern Judicial District of Washington.  
23 (EX 69)





1  
2 August 1, 1962: Registrant submitted additional infor-  
3 mation to the Appeal Board. (EX 67)

4 August 15, 1962: The Appeal Board for the Eastern  
5 Judicial District of Washington classified registrant I-A.  
6 (Cover Sheet) The registrant was notified of this classifi-  
7 cation on August 29, 1962. (Cover Sheet)

8 February 4, 1964: The registrant was ordered to report  
9 for an Armed Forces physical examination on March 2, 1964  
10 and was found acceptable for induction on March 3, 1964.  
11 (EX 55 through 57)

12 December 8, 1964: Registrant was ordered to report for  
13 induction on January 4, 1965, but was found physically  
14 disqualified due to high blood pressure on January 5, 1965.  
15 (EX 49 through 50)

16 February 2, 1965: Registrant was classified I-Y  
17 (Cover Sheet)

18 October 21, 1965: Registrant was again ordered to re-  
19 port for Armed Forces physical examination on November 16,  
20 1965, and was found fully acceptable for induction on  
21 November 17, 1965. (EX 40 through 41)

22 December 29, 1965: Registrant was ordered to report  
23 for induction on January 10, 1966. (EX 39)

24 January 11, 1966: Registrant reported to the Armed  
25 Forces Examining and Entrance Station, Seattle, Washington,



1  
2 but refused to be inducted. He signed a statement which  
3 reads as follows:

4 "I refuse to be inducted into the Armed Forces  
5 of the United States. Signed Paul Macarthur  
6 Hunter."

7 (EX 1 through 3)

8 QUESTIONS PRESENTED

9 Was there a basis in fact for the Appeal Board's  
10 denial of the appellant's claim for a conscientious objector  
11 classification?

12 SUMMARY OF ARGUMENTS

13 The appellant's selective service file reveals that,  
14 by his own admission appellant had fallen away from the  
15 Jehovah's Witness Church. The file further indicates that  
16 associates and references of the appellant's stated that  
17 appellant does not live up to the convictions of his faith  
18 and is inactive in said faith. This evidence constitutes  
19 an ample "basis in fact" to sustain the appellant's draft  
20 classification.

21 ARGUMENT

22 The test to be applied in determining whether there is  
23 a basis in fact for the denial of a registrant's claim for  
24 conscientious objector status was stated by the Supreme  
25 Court in Witmer v. United States, 348 U.S. 375 through 382,



1  
2 75 S.Ct. 392, 395 through 396, 99 L.Ed. 428, where the Court  
3 said:

4 "The primary question here is whether, under the  
5 facts of this case, the narrow scope of review  
6 given this Court permits us to overturn the  
7 Selective Service System's refusal to grant  
8 petitioner conscientious objector status. It  
9 is well to remember that it is not for the courts  
10 to sit as super draft boards, substituting their  
11 judgment on the weight of the evidence for those  
12 of the designated agency. Nor should they look  
13 for substantial evidence to support such deter-  
14 mination. *Dickinson v. United States* (195),  
15 346 U.S. 389, 396, (74 S.Ct. 152, 157, 98 L.Ed.  
16 132). The classification can be overturned only  
17 if it has 'no basis in fact'...."

18 The Court went on to say that a registrant cannot make out  
19 a prima facie case from objective facts alone because the  
20 ultimate question is always the sincerity of the registrant  
21 in objecting to participation in war. The objective facts  
22 are relevant only insofar as they help in determining the  
23 sincerity of the registrant in his claimed belief, which  
24 sincerity is purely a subjective question. The Court then  
25 concluded:

"In conscientious objector cases, therefore, any  
fact which casts doubt on the veracity of the  
registrant is relevant."

In *Estep v. United States*, 327 U.S. 114, 122-123, 66  
S.Ct. 423, 427, 90 L.Ed. 567, the Court stated:

"Courts are not to weigh the evidence to determine  
whether the classification made by the local board



1 was justified. The decisions of the local boards  
2 made in conformity with the regulations are final  
3 even though they may be erroneous. The question  
4 of jurisdiction of the local board is reached only  
if there is no basis in fact for the classification  
which it gave the registrant."

5 The government submits that the following objective  
6 facts were available to the appeal board when it classified  
7 the appellant I-A and these facts, though objective, are  
8 ~~relevant because they help in determining the sincerity of~~  
9 the registrant in his claimed belief, which, as stated above,  
0 is purely a subjective question:

1 1. When the registrant first registered with Local  
2 Board No. 14 on July 6, 1961, he stated that his attendance  
3 at Jehovah's Witness meetings had been irregular. (EX 108)  
4 He further stated that he had been a full-time minister for  
5 four months in 1959 and "then I fell away from the church.  
6 That is, I quit going until a few months ago." (EX 108)

7 2. A former employer of the registrant stated in the  
8 resume of inquiry that he believes the registrant was afraid  
9 to go into Military Service because of his insecurity  
0 brought on by the type of family life to which he had been  
1 subjected. (EX 73)

2 3. A congregation's servant of the Southeast Unit of  
3 Jehovah's Witnesses in Yakima advised that the registrant  
4 was a member of the Northeast Unit, but the Northeast Unit  
5





1  
2 stated it had no record of the registrant and had never  
3 heard of him. (EX 76)

4 4. A magazine territory servant of Jehovah's Witnesses  
5 at Yakima advised that he had studied with the registrant  
6 for about one year but that the registrant was irregular in  
7 attendance at meetings. (EX 76)

8 5. A member of the Southeast Unit of Jehovah's Witnesses  
9 in Yakima advised that she had been acquainted with the  
10 registrant for a year or two and believes that registrant's  
11 religious conviction is the real truth, but further states  
12 that the registrant does not live up to it. She further  
13 advised that the registrant had gone out to work only once to  
14 her knowledge and had not been at meetings in nine months;  
15 that he was backward, not outstandingly sincere, but of good  
16 character. (EX 76)

17 6. A reference listed by the registrant advised that  
18 the registrant was active and regular in his attendance at  
19 one time, but that at the present time (February 6, 1962)  
20 the registrant was inactive and no longer attended meetings at  
21 Yakima. This reference believed that the registrant had been  
22 inactive since 1959. He further stated that he believed the  
23 registrant to be sincere, but further believed that the  
24 registrant did not apply his sincerity to his work of a  
25



1  
2 religious nature. (EX 76)

3 7. A representative of Hobeck Precision Metals, Inc.,  
4 Burbank, California, advised that the registrant had worked  
5 there in 1962 as a pressman. The firm engages in subcon-  
6 tractor work for prime contractors in national defense, and  
7 the registrant's duties involved pressing metal parts which  
8 were subsequently used in various machines of national  
9 defense. (EX 74) Although the record is not clear in  
10 defining exactly the type of national defense machines upon  
11 which the registrant worked, the law is very clear that a  
12 registrant's willingness to engage in the production of  
13 defense materials constitutes a basis in fact for denial of  
14 his conscientious objector claim for exemption from military  
15 service. White v. United States, 215 F.2d 782 (Ninth Cir.  
16 1954), cert. den. 348 U.S. 970. This court has followed  
17 the same rule in United States v. Kenneth G. Storey, 370  
18 F.2d 255 (Ninth Cir. 1966). And the same rule has been  
19 adhered to in numerous other circuits. See Blalock v. United  
20 States, 247 F.2d 615 (4th Cir. 1957); Meredith v. United  
21 States 247 F.2d 622 (4th Cir. 1957); Robertson v. United  
22 States, 208 F.2d 166 (10th Cir. 1953); United States v.  
23 Neverline, 266 F.2d 180 (3rd Cir. 1959).



1  
2 8. The Hearing Officer, before whom Hunter appeared  
3 on May 11, 1962, was able to personally observe the  
4 registrant's demeanor and attitude during the hearing, and  
5 reported that Hunter was not familiar with the teachings of  
6 the organization or the training of the Jehovah's Witnesses;  
7 that he referred only in general terms to the Bible and said  
8 he did very little reading. On the basis of his personal  
9 observations of the registrant and of their conversation,  
10 the Hearing Officer concluded that the registrant was seeking  
11 an excuse to avoid military service and that he was not  
12 opposed to such service by reason of his religious training  
13 or his own beliefs. (EX 71)


14 CONCLUSION

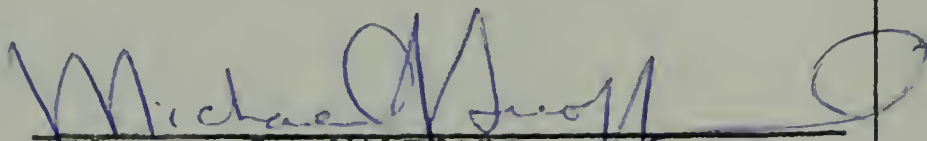
15 The government contends that there are ample facts to  
16 support the Appeal Board's decision that the registrant should  
17 not be classified I-0. This is not a situation where the  
18 decision has been based solely on the personal impression of  
19 one person; rather, it is a situation where the Local Board,  
20 Hearing Officer, Department of Justice, and the Appeal Board  
21 have taken into consideration evidence of events concerning  
22 the registrant over a period of several years. Included for  
23 consideration with the facts that the registrant, by his own  
24 admission had fallen away from his church and the further  
25



1  
2 information furnished by associates and references of the  
3 registrant who stated that he does not live up to his  
4 convictions and is inactive in the Jehovah's Witness faith.  
5 It is certainly reasonable to assume that the Appeal Board  
6 made its final classification decision on the basis of these  
7 facts. Therefore, the government respectfully contends that  
8 the registrant's defense of conscientious objection should  
9 not be sustained because there is a "basis of fact" for the  
10 classification by the Appeal Board, in accordance with the  
11 standard of judicial review set forth by Estep v. United  
12 States, supra, and Witmer v. United States, 348 U.S. 375,  
13 380-382. Accordingly, the government respectfully urges  
14 that the judgment of the District Court be affirmed.

15 Respectfully submitted,

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18 EUGENE G. CUSHING  
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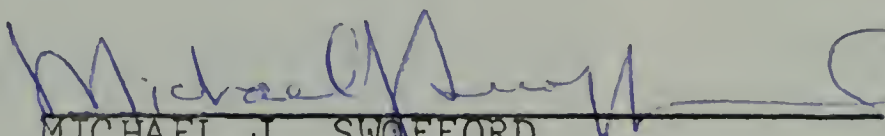
22 1012 U.S. Courthouse  
23 Seattle, Washington  
98104





1  
2 CERTIFICATION  
3

4 I hereby certify that, in connection with the  
5 preparation of this brief, I have examined Rules 18 and 19  
6 of the United States Court of Appeals for the Ninth Circuit  
7 and that, in my opinion, the foregoing brief is in full com-  
8 pliance with those rules.

9   
10 MICHAEL J. SWOFFORD  
Assistant United States Attorney

11 DATED at Seattle, Washington  
12 this 18 day of May, 1967.  
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